DCS's emphasis on supervisory structure is archaic and leads to empire building which is inefficient and ineffective and that DCS's decision to title change, rather than reallocate, him and Sylvia Sterne on February 15, 1982, was discriminatory and effectively demoted him and was done solely because Ms. Sterne did not qualify for her position. Mr. Vanderwall alleges that Civil Service Rule 13.10(d) is inherently discriminatory because the appeal does not go directly to the Commission. Mr. Vanderwall charges DCS with laxity in failing to watchdog DHHR and complains that the Civil Service Manual fails to contain any mechanisms whereby an employee can safely blow the whistle on his supervisors or DCS, that the Civil Service Rules favor and protect

superiors rather than employees and that the agency's legal resources are provided to supervisors. Mr. Vanderwall complains that there was a twenty-month delay in responding to his appeal dated March 22, 1982, wherein he challenged his allocation; that DCS selectively approves reallocations for those in favor and denies reallocations to those not in favor; that his SF-3 dated December 30, 1981, was altered by whiting out his supervisory responsibilities; that his supervisor's SF-3 dated December 30, 1981, was falsified; that his SF-3 dated November 29, 1983, was conspiratorially developed by his supervisors without his having had an opportunity to participate; that DCS is in cahoots with DHHR personnel and merely rubber stamps the decisions

of DHHR personnel; that he was pressured into signing his job description after it was developed by his supervisors and by representatives of DCS in a meeting on November 29, 1983, in which he was not invited to participate; that DCS totally disregarded the documents he submitted on and after September 20, 1983; that DCS refused to consider his duties between December 30, 1981, and the time when his duties were diminished; that DCS returned his SF-3 dated September 27, 1983, because his supervisor had indicated that "approximately 50% of the description is outdated" rather than having his supervisor explain her comment; that he was disciplined twice for making known his superiors' decisions to obstruct the submittal of a budget request, which

disciplinary actions were later rescinded.

Additionally, Mr. Vanderwall attaches as exhibits to his request for appeal/request for investigation his SF-3s dated December 30, 1981, and August 31, 1981, DHHR organizational charts, time and attendance records, and a document entitled "A Brief for My Appeal/Grievance." In the latter document, Mr. Vanderwall alleges that in 1981-82, a conspiracy occurred to exploit state government, to conceal information from him and to discriminate against him, to favor the promotion of an unqualified friend of DHHR, of DCS, and of the Louisiana State Senators. Mr. Vanderwall demands to know who whited out the supervisory responsibilities on his SF-3 dated

December 30, 1981; why a memo dated July 2, 1981, from the DHHR Personnel Administrator to DHHR Acting Assistant Secretary was concealed from the staff until November 24, 1981; why DHHR Acting Assistant Secretary gave top priority to his reallocation on November 16, 1981, when he knew on November 5, 1981, and possibly on July 2, 1981, that DCS intended to abolish the Planner series; why the Division of Records and Statistics was hastily created on December 4, 1981, giving William Barlow responsibility for the Division of Records and Statistics as well as the Division of Policy, Planning and Evaluation; why, if Mr. Barlow was the Director of the Division of Policy, Planning and Evaluation until March 15, 1982, was Sylvia Sterne paid to perform

that job as of December 4, 1981; why was Ms. Sterne's SF-3 dated December 30, 1981, falsified as to the number of employees she supervised; why did not DHHR or DCS question the whiting-out of his SF-3 and the falsification of Ms. Sterne's SF-3 as to supervisory responsibility; why did DCS title change Mr. Vanderwall's and Ms. Sterne's positions rather than reallocate them; why did DCS delay in responding to his appeal for reallocation dated March 22, 1982, until August 4, 1983; what two Senators used their influence; whether the merit system prefers evolutionary or revolutionary career progression; why Ms. Sterne, who has less than four years of state service, is at the 6th step and earns $29,664, and Mr. Vanderwall, who has 26 years of state service, is at the

10th step and earns $28,860; whether a Public Health Planner and Program Developer can be adequately developed by progression in the Planning Analyst series and be supervised by someone without related professional knowledge, skills, and experience; and whether there is a need for an impartial board to investigate the Office of Health Services and Environmental Quality (hereafter, OHSEQ).

Finally, Mr. Vanderwall attaches to his request for appeal/request for investigation a document entitled "Significant Events." In this section, Mr. Vanderwall alleges that DHHR-OHSEQ was taken over by persons who were forced out of the New Orleans Health Department by Mayor Morial; that on November 5, 1981, Mr. Barlow announced

that DCS had given interim approval to the Planning Analyst series and told Mr. Vanderwall to apply for a Planning Analyst V position and told Sylvia Sterne to apply for a lower level position; that Mr. Barlow claimed that he had just become aware of this decision, although DCS's memo was dated July 2, 1981; that Mr. Vanderwall threatened to sue everyone involved in this coverup; that the Acting Assistant Secretary issued a new DHHR-OHSEQ organizational chart on December 4, 1981, creating a new Division of Records and Statistics and giving Mr. Barlow the dual responsibility complained of above; that on December 30, 1981, the Deputy Assistant Secretary advised Mr. Vanderwall to accompany him to his office to sign an SF-3 for a Planning

Analyst V position; that on February 23, 1982, the Deputy Assistant Secretary announced that Sylvia Sterne was retitled to a Planning Analyst IV (sic) position and would be made the Director of the Division of Policy, Planning and Evaluation and no one was retitled to the V position; that on March 15, 1982, Ms. Sterne's appointment was officially announced and Mr. Vanderwall approached the Acting Assistant Secretary and complained about the appointment, contending that the Deputy Assistant Secretary favored Ms. Sterne too much. As relief, Mr. Vanderwall seeks a reallocation to an appropriate class such as Planning Analyst V.

On April 25, 1984, counsel for DCS filed a Request for Summary Disposition of the appeal wherein he argued that Mr.

Vanderwall had failed to specifically plead any facts which would support his conclusion that the Director of DCS discriminated against him or that the Director treated him any differently from other persons similarly situated and therefore had no right to appeal. As to the request for investigation, counsel for DCS argued that DCS either had undertaken an investigation of the charges and by the date of the hearing, DCS either would have filed charges with the Commission or would have notified Mr. Vanderwall that DCS would not file charges.

On June 7, 1984, Mr. Vanderwall filed a letter demanding a copy of the investigation report and asking that the argument on the Request for Summary Disposition be deferred until after he

had been given a copy of the investigation report. By letter dated June 15, 1984, the Director of DCS advised Mr. Vanderwall that pursuant to Civil Service Rule 15.9(c)3, the investigation report was confidential until it was produced at a public hearing and that because the request for appeal and the request for investigation were separate matters, the hearing on the Request for Summary Disposition of the appeal would be conducted as scheduled.

On June 22, 1984, Mr. Vanderwall filed another letter wherein he contended that after his appeal was filed, he obtained a copy of the classification report dated December 7, 1983, prepared by Larry Golden, a DCS technician, concerning Mr. Vanderwall's

request for reallocation. Mr. Vanderwall stated that he had become convinced that the Director's decision was discriminatory. Mr. Vanderwall contended that his position was selected as the benchmark for the Planning Analyst IV position and therefore, his allocation was predetermined and that had not DHHR whited out his original SF-3 as to his supervisory responsibility, his position would have been reallocated. Mr. Vanderwall complained that after DCS learned that DHHR had whited out a portion of his SF-3, DCS did nothing about this apparent violation of Civil Service Rule 14.1(j) and that DCS returned to him, without explanation, on June 14, 1984, the package of material he submitted in support of his request for

investigation. Mr. Vanderwall contended that DCS's decision to title change Ms. Sterne's position in 1981 was incorrect and that the Director's decision on December 13, 1982, as to Mr. Vanderwall's position was also incorrect because Mr. Vanderwall was the principal assistant to the Director of Policy, Planning and Development. Mr. Vanderwall asked that appellee's Request for Summary Disposition not prevent his being able to put on evidence as to wrongdoing and discrimination. The thrust of Mr. Vanderwall's argument is that had not DHHR deliberately diminished and obstructed his job, it would be worthy of a Planning Analyst V position.

A public hearing on the appeal, limited to the issue raised in the

Request for Summary Disposition, was held before the Commission on July 10, 1984, in Baton Rouge.

On August 8, 1984, Mr. Vanderwall filed a pleading entitled "postscript" wherein he contended that either DCS was duped by DHHR or it participated in or perpetuated or failed to correct a scheme to diminish his position and to enhance Ms. Sterne's position. In support of this conclusion, Mr. Vanderwall refers to the deliberate benchmarking of his position as a Planning Analyst IV, the whiting out of his position description; the drafting of another position description for him; the action to title change rather than reallocate him; the convenient reorganization of DHHR-OHSEQ central office on December 4, 1981; and the

secret reorganization of DHHR-OHSEQ Policy, Planning and Evaluation Section on February 5, 1982. Mr. Vanderwall referred to the language contained in the classification report prepared by Larry Golden, a DCS technician, which refers to two alternate reorganization plans, one with a principal assistant to the chief of the planning unit and one without and concluded that the February 5, 1982, reorganization was accomplished solely to diminish his position. Mr. Vanderwall contended that the need to create a distinct planning unit within DHHR-OHSEQ was false because it already had, since 1975, a centralized distinct planning unit which Mr. Vanderwall had designed and created and of which Mr. Vanderwall was the first employee other than its director. Mr. Vanderwall

complained that the unmonitored and uncontrolled use by DHHR of temporary and acting appointments of unqualified persons effectively circumvented the Civil Service Rules concerning promotions. Mr. Vanderwall complained that Ms. Sterne was appointed as Acting Director of the Policy, Planning and Evaluation Section, was later demoted to the position of Chief of the Program Evaluation Unit and then was reappointed as Director of the Policy, Planning and Evaluation Section following the December 4, 1981, reorganization of DHHR-OHSEQ central office. Mr. Vanderwall contended that these maneuvers were made so that it would not appear that DHHR-OHSEQ had a distinct planning unit and that the creation of the Planning Analyst series of classes

by DCS was concealed by DHHR to strategize Ms. Sterne's promotion. Mr. Vanderwall complained that the merit system does not adequately protect employees from their superiors' internal political manipulations and favors empire building and does not provide a mechanism whereby an employee can blow the whistle.

By an opinion rendered on September 26, 1984, the Commission concluded that Mr. Vanderwall had stated a basis for appeal, under Chapter 13 of the Civil Service Rules, as to certain allegations in support of his conclusion that the Civil Service rules have been violated, specifically, the following allegations:

1. that his position was obviously altered by white out fluid to delete his supervisory responsibilities;

2. that his supervisory

responsibilities were erroneously transferred to Ms. Sterne's job description dated December 30, 1981; therefore, that Ms. Sterne's job description was falsified;

3. that the Department of State Civil Service acted based on obviously falsified job descriptions;
4. that Ms. Sterne did not qualify for the position to which she was appointed in December 1981;
5. that between December 4, 1981, and March 15, 1982, Ms. Sterne was paid to perform duties which were actually assigned to William Barlow; and
6. that Ms. Sterne was title changed to Planning Analyst IV (VI-sic) on February 23, 1982, based on a false job description.

The Commission ordered that DHHR and Ms. Sylvia Sterne be added as parties to the appeal. The appeal was referred to a hearing on the merits, limited to a consideration of proof of the six above-listed allegations. The burden of proof, as to the facts, was placed on Mr. Vanderwall.

On October 25, 1984, the Secretary of DHHR and Ms. Sterne were mailed a complete copy of the record in the appeal.

By agenda dated October 26, 1984, the appeal was scheduled for hearing on December 4, 1984. On November 8, 1984, Mr. Vanderwall asked for a continuance of the hearing. In this letter, Mr. Vanderwall also contended that, as to his request for an investigation, Civil Service Rule 16.3(b) had been violated because a hearing had not been conducted within six months of Mr. Vanderwall's having filed his request for investigation. Mr. Vanderwall asked that the appeal hearing not be scheduled until after the hearing on the investigation was conducted.

By letter dated November 26, 1984,

counsel for DCS advised Mr. Vanderwall that the Director of DCS had declined to file charges with the Commission based on his complaint. Mr. Vanderwall was advised that pursuant to Civil Service Rule 16.3, he had a right to prosecute before the Commission the written charges he had filed that alleged a violation which occurred within one year of the date he filed those charges and that the Commission could consider charges relating to actions which occurred more than one year before the charges were filed.

On January 23, 1985, counsel for DCS filed a Request for Summary Disposition as to the investigation. Counsel argued that inasmuch as the same document which was submitted as a request for appeal was also submitted as a

request for investigation, the hearing on the investigation should be limited to the same charges to which the appeal had been limited. Counsel argued that the remaining charges lack specificity and that the additional charges filed by letters dated June 22, 1984 and August 8, 1984, also lack specificity. By letter dated January 29, 1985, the parties were advised that the Request for Summary Disposition would be considered at the outset of the hearing on the merits.

A public hearing was held before the State Civil Service Commission on February 5, 1985, and April 2, 1985, in Baton Rouge, Louisiana, for the purpose of hearing the appeal and to allow Mr. Vanderwall to prosecute the charges in the request for investigation. Based on the evidence presented, the Commission

makes the following findings.

PRELIMINARY MATTERS

At the outset of the hearing, counsel for DCS argued his Request for Summary Disposition of the investigation. Counsel argued that the hearing of the investigation should be limited to the six items to which the appeal had been limited because only those six allegations had been pleaded with sufficient specificity to enable respondent to prepare a defense. Counsel for DHHR presented a similar motion. The Chairman ruled that the appeal would be limited to the six allegations listed in the opinion rendered on September 26, 1984, but, as to the investigation, complainant could put on evidence as to all factual allegations contained in the complaint.

FINDINGS OF FACT

1. The Office of Health Services and Environmental Quality (hereafter, OHSEQ) is one of the main divisions of the Department of Health and Human Resources (hereafter, DHHR). OHSEQ is headed by an Assistant Secretary, who reports to the Secretary of DHHR. At all times pertinent hereto, Mr. Vanderwall functioned as a planner for OHSEQ. At all times pertinent hereto, someone in OHSEQ functioned as a program evaluator.

2. In April 1973, David Bruce was hired as a Planner III. His background was in engineering. At some point in time, OHSEQ created a position of Director of Program Development and Evaluation to advise the Assistant Secretary on all agency planning, policy

development and program evaluation. Mr. Bruce functioned in this capacity. This position was described to DCS as a new position (#1155-001) and was allocated to the class of Community Planning Program Coordinator effective August 11, 1978. While Mr. Bruce was the Director, he supervised Mr. Vanderwall, who functioned as a planner, and Stanley Brown, who functioned as a program evaluator (position #1714-002). Effective October 23, 1978, Mr. Brown became the State Registrar of Vital Records and position #1714-002 became vacant. On December 4, 1978, Mr. Bruce resigned.

3. After Mr. Bruce resigned, Joseph Kimbrell, who was then a Public Health Program Administrator III, was detailed to special duty as the Acting

Director of Program Development and Evaluation. This detail to special duty lasted from December 4, 1978, to March 3, 1979. Mr. Kimbrell was the last person to fill position #1155-001 when it was allocated to the class of Community Planning Program Coordinator.

4. On February 8, 1979, Sylvia S. Sterne was hired as a Federal Program Analyst II by Dr. J.T. Hamrick, the Acting Assistant Secretary. Her function was program evaluation. She was hired because by Executive Order dated December 6, 1978, the Governor mandated that each agency develop program evaluation techniques and OHSEQ was in the process of setting up an Evaluation Unit. Ms. Sterne was hired in a new position (#1714-003). By memorandum dated March 9, 1979, Dr.

Hamrick announced the establishment of the Evaluation Unit and named Ms. Sterne as the Director of the Unit.

5. OHSEQ had a problem with the allocation of the job which functioned as Director of Program Planning and Development (position #1155-001). Apparently, DCS had no better class to which to allocate the job than Community Planning Program Coordinator. The class specification for the class of Community Planning Program Coordinator envisioned urban planning and the minimum qualifications therefor involved education and experience in the area of urban, regional and community planning.

6. The position of Director of Program Development and Evaluation was a health and human resource planning position. OHSEQ had a position

(#1155-001) and needed this function performed. However, OHSEQ could not hire someone with health and human resource planning experience because that experience would not meet the minimum qualifications for the class of Community Planning Program Coordinator. For this reason, OHSEQ abandoned using position #1155-001 and did not request that it be funded. So, on paper, OHSEQ had a position which was vacant, unfunded, and was allocated to a class that was completely useless to OHSEQ. (Effective August 1, 1980, DCS abolished the class of Community Planning Program Coordinator.)

7. In September 1979, Mr. Kimbrell became the Deputy Assistant Secretary. Effective September 4, 1979, Dr. Hamrick designated Ms. Sterne as Acting Director

of the Program Planning and Evaluation Section. (Apparently, somewhere along the line, the name of the section had been changed.) While serving in this capacity, Ms. Sterne stayed in her former position (#1714-003) and remained a Federal Program Analyst II. In her capacity as Acting Director, Ms. Sterne supervised Mr. Vanderwall. Ms. Sterne became ill in July 1980, and William Barlow was designated Acting Director. While Mr. Barlow functioned in this capacity, he, too, stayed in his former position number and remained allocated to his former class, which was DHHR Executive Officer II. As Acting Director, Mr. Barlow was Mr. Vanderwall's supervisor.

8. While Mr. Barlow served as Acting Director of the Program Planning

and Evaluation Section, it was comprised of three components: 1) the Planning and Program Development Unit, which was headed by Mr. Vanderwall, a Health Planning Officer; 2) the Evaluation Unit, which was headed by Sylvia Sterne, a Federal Program Analyst II; and 3) the Management Systems Unit, which was headed by Jean Craig, a Public Health Administrator IV. The unit heads reported to Mr. Barlow and Mr. Barlow reported directly to the Assistant Secretary. Sometime between 1980 and April 1981, Dr. Harold Heitkamp replaced Dr. Hamrick as Acting Assistant Secretary.

9. While Mr. Barlow was Acting Director of Program Planning and Evaluation, Mr. Vanderwall was considered the chief planner because he

headed up the Planning Unit and was more senior than Catherine Lampard, the other planner in the unit. Mr. Vanderwall was responsible for developing a public health plan for OHSEQ. Development of this plan required assistance from thirty-five to forty programmatic managers and Mr. Vanderwall had to work closely with seven planners. Mr. Vanderwall's role was to get the information from the programmatic managers, compile it in a prescribed format, provide planning assistance as needed, and see to it that the plan was delivered to the printer.

10. Although Mr. Vanderwall was considered to be the chief planner, at no time pertinent hereto was Mr. Vanderwall considered the Assistant Director of the Program Planning and

Evaluation Section and at no time did he exercise any line supervision over the other units (Evaluation and Management Information) within that Section.

11. Between April 1981 and May 20, 1982, R.K. Banks was the Acting Assistant Secretary for OHSEQ. When Mr. Banks assumed office, OHSEQ was organized into Divisions and all the Division Directors reported directly to the Assistant Secretary. This involved the Assistant Secretary in day-to-day coordination of activities which left him little time for policy formulation. Additionally, Mr. Banks felt that Dr. Sarah Braud, the Health Deputy Assistant Secretary, had an ill-defined role and was underutilized. Mr. Banks wanted to reduce his span of control and to better utilize Dr. Braud. There was also a

problem in the Vital Records function. Mr. Banks felt that Vital Records needed a senior manager to provide oversight. So Mr. Banks began to reorganize OHSEQ.

12. Mr. Banks also felt that several positions were underallocated, including Mr. Vanderwall's and Ms. Sterne's positions. Mr. Banks directed that requests for reallocations be prepared. In order to request a reallocation, DCS had to be provided with current descriptions of the duties of the positions sought to be reallocated.

13. A job description for Mr. Vanderwall's position was prepared by Mr. Vanderwall and Mr. Barlow. This description was signed by Mr. Vanderwall on August 31, 1981, by Mr. Barlow on September 1, 1981, and by Mr. Banks on

October 22, 1981. On this job description, Mr. Vanderwall was described as being the chief planner for OHSEQ. This description indicates that Mr. Vanderwall's supervisor was Mr. Barlow, DHHR Executive Officer II. In the narrative portion of the description, Mr. Vanderwall is described as providing "professional supervision to seven (7) office planners and administrative supervision to two (2) planners." However, in the block designated for listing the names and titles of persons supervised, Mr. Vanderwall's job description lists only Catherine Lampard, Health Planning Officer, and the vacant Community Planning Program Coordinator position as his subordinates. The purpose for preparing this job description was to

request a reallocation of Mr. Vanderwall's position from Health Planning Officer to Planner IV.

14. A job description was also prepared for Ms. Sterne's position, describing her duties as the chief of the Evaluation Unit. The position description indicates that her supervisor was Mr. Barlow and that she supervised Sandja de Massas and Richard A. LeBarge, Federal Program Analysts. Ms. Sterne signed this job description on September 3, 1981; Mr. Barlow signed it and Mr. Banks signed it on October 20, 1981. The purpose for preparing this job description was to request that Ms. Sterne's position be reallocated to the class of Public Health Administrator III.

15. On November 16, 1981, both

Mr. Vanderwall's and Ms. Sterne's job descriptions were forwarded to DHHR's Bureau of Classification and Wage to be reviewed.

16. While all this paperwork for reallocations was being prepared, Mr. Banks was proceeding to reorganize OHSEQ. By memo dated November 16, 1981, the name of the Program Planning and Evaluation Section was changed to the Policy, Planning and Evaluation Section effective December 1, 1981. The name change was made to indicate that this section wsa also responsible for policy development.

17. By memo dated December 4, 1981, Mr. Banks announced a reorganization of OHSEQ. The Directors of the programmatic units were directed to report to Dr. Braud and the Directors

of administrative units were directed to report to Mr. Kimbrell. The creation of the Division of Records and Statistics was announced and William Barlow was directed to assume the responsibility of Division Director effective immediately. Mr. Banks thus reduced his span of control to three people--Dr. Braud, Mr. Kimbrell, and Dr. Neil, the head of Local Health Services.

18. Meanwhile, independently of OHSEQ's reorganization, DCS had initiated a study of all of the planning classes in the state. DCS discovered that there were a lot of people in the state who performed planning functions and they were allocated to about thirty different classes, depending on what kind of planning was being performed. DCS wanted to consolidate all of these

planning functions into a single series to be designated Planning Analyst I-VII. DCS initiated its study in January 1981 and audited fifty planning jobs throughout the state, including Mr. Vanderwall's and Ms. Lampard's positions. After the study was completed, the class specifications for the Planning Analyst series were prepared. In July 1981, the proposed class specifications were sent to all agencies which employed planners for their review and comment. By memorandum dated July 2, 1981, Harold Bennett, DHHR Personnel Administrator, sent the proposed specifications to Mr. Banks and advised him that this series would affect the class of Planner I-V, Health Planning Officer (Mr. Vanderwall's class) and other classes. There was no

indication that the new series would encompass the Federal Program Analyst classes (Ms. Sterne's class).

19. When Mr. Barlow signed Mr. Vanderwall's job description on September 1, 1981, he was not aware of the proposed Planning Analyst series. When Mr. Banks signed Mr. Vanderwall's job description on October 22, 1981, Mr. Banks was aware of the proposed new series, but did not know when or if the new series would be implemented, so he requested that Mr. Vanderwall's job be allocated to an existing class in the Planner series. Mr. Banks figured that if and when DCS implemented the Planning Analyst series, he could submit another description for Mr. Vanderwall's job so it could be allocated within the new series.

20. Meanwhile, back at DCS, the Planning Analyst series was created effective November 5, 1981. So by the time Mr. Vanderwall's job description reached DHHR's Bureau of Classification and Wage on November 16, 1981, the request for reallocation to Planner IV had become inappropriate. This request for reallocation was never forwarded to DCS.

21. When DCS created the new Planning Analyst series, it asked agencies with planning functions to submit new job descriptions so these positions could be allocated within the new series. By letter dated November 20, 1981, Mary Ann Manley, the Administrator for the Bureau of Classification and Wage for DHHR, advised Mr. Banks that DCS had given

interim approval to the establishment of the Planning Analyst series. Mr. Banks was asked to submit job descriptions for any existing planner positions and was advised that any planner positions not updated would be considered abolished.

22. In response to this request, another job description was prepared for Mr. Vanderwall's position. This description was originally identical to the August 31, 1981, job description and was signed by Mr. Vanderwall on December 30, 1981. When this job description was presented to Mr. Kimbrell for his signature, he did not agree with it and whited out and changed certain portions of the job description. As a result of the alterations, Mr. Vanderwall was described as supervising only Ms. Lampard; the reference to "professional

supervision to seven (7) office planners and administrative supervision to two (2) office planners" was eliminated; and Mr. Vanderwall's supervisor was shown as "Director, Policy, Planning and Evaluation" instead of William Barlow. Mr. Vanderwall was aware that Mr. Kimbrell had altered his job description and was shown the altered version on December 30, 1981.

23. The reason Mr. Kimbrell whited out portions of Mr. Vanderwall's job description was that he did not feel that it accurately reflected Mr. Vanderwall's job. Mr. Kimbrell felt that the vacant Community Planning Program Coordinator position no longer existed and even if it did, it would not have been supervised by Mr. Vanderwall, since that position had formerly been

used for the Director of the Section when the Director reported directly to the Assistant Secretary. Mr. Kimbrell knew that Mr. Barlow was no longer Mr. Vanderwall's supervisor since Mr. Barlow had already been assigned as Director of the Division of Records and Statistics, so Mr. Kimbrell indicated the working title of the position which would supervise Mr. Vanderwall. Finally, Mr. Kimbrell did not feel that Mr. Vanderwall supervised, in any capacity, the nine planners mentioned in the narrative portion of the job description. Mr. Kimbrell was later advised by his personnel office that he should not have used white out fluid to change the job description, but rather, should have used Section 15 of the job description form to express his

disagreements with the description.

24. While Mr. Vanderwall was working on the public health plan, he had to work closely with programmatic managers and all planners within OHSEQ. This was the basis for the statement in the narrative portion of Mr. Vanderwall's job description that he exercised professional and administrative supervision over nine planners. Mr. Kimbrell did not feel that Mr. Vanderwall's role with respect to these planners was supervisory, nor did this role fit DCS's definitions of supervision. Mr. Vanderwall himself testified that he knew DCS would not consider his relationship with the planners as supervisory and that this was the reason he did not list these planners by name and title in Item 11 on

the job description, where subordinates are to be listed.

25. Based on all of the evidence presented, the Commission finds, as a matter of fact, that Mr. Vanderwall's job as of December 31, 1981, was more accurately described after Mr. Kimbrell altered it than it was prior to these alterations.

26. After whiting out what he deemed to be inaccurate, Mr. Kimbrell signed Mr. Vanderwall's job description on January 4, 1982. Mr. Banks signed the description on January 5, 1982. This job description was used as the basis for requesting that Mr. Vanderwall's position be allocated to Planning Analyst V.

27. Meanwhile, Mr. Barlow, who had been a DHHR Executive Officer II,

updated his job description to indicate his duties as Director of the Division of Records and Statistics. This updated job description was submitted to DCS for reallocation. DCS allocated this position to the class of DHHR Executive Officer II. Thus, Mr. Barlow stayed at the same allocation despite a change in his duties. Mr. Barlow took his position (which was formerly used in OHSEQ in some administrative capacity) with him when he became the Director of Records and Statistics because there was no position for the new Directorship.

28. OHSEQ also prepared a new job description for Ms. Sterne. Ms. Sterne was still allocated to the class of Federal Program Analyst II, which is a journeyman program evaluator class. However, since September 4, 1979, Ms.

Sterne had been performing more responsible functions--as Chief of the Evaluation Unit, as Acting Chief of the Program Planning and Development Section, then again as Chief of the Evaluation Unit, then again as Acting Director of Policy, Planning and Evaluation since December 4, 1981. <There are comments on Ms. Sterne's September 3, 1981, job description which indicate that in May 1980, DCS had approved a request to reallocate Ms. Sterne to a Public Health Administrator IV position (apparently based on her function as Acting Director), but that OHSEQ was reorganized and Ms. Sterne was returned to her position as Chief of the Evaluation Unit before the reallocation was implemented.> OHSEQ believed that Ms. Sterne had not been adequately paid

for what she had been doing and sought to have her classification upgraded.

29. By this time, it had already been decided by Mr. Banks, Dr. Braud, and Mr. Kimbrell that Ms. Sterne was best suited to serve as the Director of Policy, Planning and Evaluation, particularly since the emphasis at this time was on program evaluation. So another job description for Ms. Sterne was prepared in anticipation of designating Ms. Sterne as the Director of the Policy, Planning and Evaluation Section. This job description shows Ms. Sterne's supervisor as being Mr. Kimbrell and shows Mr. Vanderwall, Ms. Lampard, and others as being Ms. Sterne's subordinates. In Item 14, the following comment was made: "A restructuring of the OHSEQ organization

on December 4, 1981, has left the Policy, Planning and Evaluation Section without a Chief. The position description remains the same. It is proposed that this vacancy be filled, and this appointment become effective on the date of approval of this reallocation." (Emphasis added.) In Item 1, which is the space to indicate the name of the employee in the job or "vacant" if the job is not filled, Sylvia Sterne's name is entered. This job description accurately described the duties to be performed by the Director of Policy, Planning and Evaluation. Ms. Sterne signed this job description on December 30, 1981, and Mr. Kimbrell signed it on January 4, 1982.

30. While it is clear that OHSEQ intended to make Ms. Sterne the Director

of Policy, Planning and Evaluation, there is a serious question as to whether, in December 1981, Ms. Sterne was actually performing all of the duties listed on the job description which she signed on December 30, 1981. On one hand, Mr. Banks testified that Mr. Kimbrell had authority over Policy, Planning and Evaluation and could have delegated his authority; Mr. Kimbrell testified that he did in fact delegate this authority to Ms. Sterne in December 1981; and Ms. Sterne confirmed that she had been designated as Acting Director. On the other hand, Mr. Banks also testified that he and Mr. Barlow had made an arrangement whereby Mr. Barlow would remain Director of Policy, Planning and Evaluation during the transition; Mr. Banks did not know if

Mr. Kimbrell had designated Ms. Sterne as Acting Director; Mr. Barlow and Mr. Vanderwall did not know that Ms. Sterne had been designated Acting Director; Mr. Barlow signed the time and attendance records for the Policy, Planning and Evaluation Section between December 4, 1981, and March 15, 1982; and Ms. Sterne did not begin signing the time and attendance records for the Policy, Planning and Evaluation Section until March 15, 1982. Based on the testimony presented and the comment made in Item 14 of Ms. Sterne's job description, the Commission concludes that in December 1981, Ms. Sterne was not actually fully responsible for all of the duties listed on her December 30, 1981, job description.

31. OHSEQ did not know whether

this position was technically a reallocation of Ms. Sterne's old position (#1714-003) or was a new position. For this reason, both the blocks "Reallocation" and "New Position" were checked. DHHR requested an allocation of the position to the class of DHHR Executive Officer I. At this time, DHHR assumed that DCS would allocate the position to one of its administrative classes.

32. Both Mr. Vanderwall's and Ms. Sterne's job descriptions were submitted to DCS for processing.

33. On February 5, 1982, officials of OHSEQ met with classification technicians of DCS to discuss how the Planning Analyst series would be implemented in light of the reorganization which had taken place.

Apparently, two possible organizational structures were discussed, one having an Assistant Director of Policy, Planning and Evaluation and one without such an Assistant. OHSEQ wanted all the unit heads to be at equal levels and to report to the Director, so OHSEQ elected not to establish a position for an Assistant Director. The February 5, 1982, meeting resulted in no change in OHSEQ's original intentions concerning its organizational structure.

34. DCS reviewed the job descriptions. DCS determines whether a position will be reallocated or title changed and then DCS directs the agency to prepare the paperwork to make the changes. By letter dated February 15, 1982, over the signature of Frank V. Reitzell, Chief of Classification and

Pay, DCS advised DHHR that the following title changes were to be made:

Mr. Vanderwall - Planning Analyst IV
Ms. Sterne - Planning Analyst VI

The letter also stated that position #1155-001 (formerly allocated as Community Planning Program Coordinator) would be allocated to the class of Planning Analyst IV because "the duties and responsibilities assigned to this position had changed to such an extent that it was deemed a new position."

35. Because the actions were title changes, under the provisions of Civil Service Rule 5.7, the incumbents of the positions were allowed to remain in their positions whether they qualified or not. For this reason, DCS was not called upon to determine whether either Mr. Vanderwall or Ms. Sterne met the minimum qualifications for the newly

created classes.

36. Mr. Vanderwall's title change was made retroactive to November 5, 1981, when interim approval had been given for the creation of the Planning Analyst series.

37. On March 15, 1982, Ms. Sterne was officially appointed as the Director of Policy, Planning and Evaluation based on Mr. Kimbrell's recommendation to Mr. Banks. The title change of Ms. Sterne's position was made effective December 4, 1981, when the organization was announced and was not made effective on November 5, 1981, when the rest of the title changes were effective for the Planning Analyst series.

38. When DCS initiates a class study, it audits representative jobs to determine how many different levels of

responsibility are being performed in a class series. After discerning what jobs are being performed, DCS develops proposed class specifications to distinguish between the various levels of work found and which will encompass all the jobs. In the Planning Analyst series, apparently DCS found that there were seven distinct levels of work being performed throughout the state. DCS found that Mr. Vanderwall's and Ms. Lampard's jobs were representative of the fourth level of responsibility and were good examples thereof. Therefore, Mr. Vanderwall's and Ms. Lampard's job were "benchmarked" for the Planning Analyst IV level and other planning jobs in the state were compared to these positions to determine if the other positions were equivalent to Mr.

Vanderwall's and Ms. Lampard's jobs.

39. The class specifications for the class of Planning Analyst IV indicate that the class was designed to encompass a position which served as a supervisor in a general field, an advanced journeyman in a complex field or a journeyman in statewide policy planning.

40. The specifications for the class of Planning Analyst V indicate that the class was designed to encompass a position which: 1) directed the planning activities of a major state agency in a general field; 2) supervised at least three surbordinate Planning Analysts in a complex field; 3) assisted in directing planning activities in a large planning unit in a major state agency in a complex field;

or 4) served as an advanced journeyman in statewide policy planning.

41. For allocation purposes, DCS considers only line supervision and professional supervision. If an employee has more seniority than an employee in the same classification, this is not considered supervision. For this reason, DCS did not consider Mr. Vanderwall's relation to Ms. Lampard as supervisory. For an employee to be considered a line supervisor, that employee must make assignments to subordinate personnel, must be accountable for the quality, quantity, and timeliness of the work performed and must direct the day-to-day activities of the subordinates. The concept of professional supervision is similar to line supervision except that the

professional supervisor gives guidance to subordinate staff rather than directs the activities of subordinates on a day-to-day basis. Mr. Vanderwall's working relationship with other planners in OHSEQ while he was working on the state health plan was not considered supervisory because Mr. Vanderwall was not accountable for their work and did not have the authority to direct or guide their activities.

42. Mr. Vanderwall's job was not allocated to the class of Planning Analyst V because he did not perform any of the functions envisioned by the class specification. He did not direct DHHR's planning functions, but rather worked in a small unit within OHSEQ of DHHR. At best, he supervised one employee whose allocation at all times pertinent hereto

was equal to his; therefore, he did not have the required supervisory responsibility to be allocated as a Planning Analyst V. Mr. Vanderwall did not serve as an assistant to the Director of the Policy, Planning and Evaluation Section, because OHSEQ chose not to organize the Section in that manner. Finally, Mr. Vanderwall did not work in the Office of Management and Finance of DHHR where statewide planning is done. Succinctly stated, the planning unit which Mr. Vanderwall headed (composed of himself and Ms. Lampard) was too small for its head to be allocated to the class of Planning Analyst V.

43. The minimum qualifications for the class of Planning Analyst VI are:

MINIMUM QUALIFICATION REQUIREMENTS

INCUMBENTS OF THESE POSITIONS WILL SPECIALIZE IN SPECIFIC FIELDS: WHEN FILLING THE VARIOUS POSITIONS, ONLY APPLICANTS WHO HAVE QUALIFYING EDUCATION OR EXPERIENCE WHICH IS NECESSARY FOR THE POSITION WILL BE CONSIDERED.

A baccalaureate degree in accounting, anthropology, architecture, business administration, management, computer science, counseling, economics, education, engineering, environmental science, geography, government, health science, history, landscape architecture, law, law enforcement, mental health, marketing, planning, political science, psychology,

public administration, social work, sociology, statistics, transportation, urban studies, or closely related fields plus five years of professional level experience in any of the above-listed fields, including one year at a level equivalent to Planning Analyst IV in the state service.

SUBSTITUTIONS

Additional qualifying experience or subprofessional experience in qualifying fields may be substituted for the required college training on a year-for-year basis.

Graduate work in qualifying fields may be substituted for one year of the required experience on

the basis of thirty semester hours for one year of experience.

A master's degree in qualifying fields may be substituted for two years of the required general experience.

A doctorate degree in qualifying fields may be substituted for three years of the required general experience. There is no substitution for the remaining general experience or the one year of experience equivalent to Planning Analyst IV in the state service.

44. There was some testimony indicating that Ms. Sterne's degrees are in English Literature. Although Ms. Sterne was present during this hearing and was a party to the proceedings, Mr.

Vanderwall failed to question her in detail concerning her qualifications for the position. Although Bill Rowe, the Chief of the Examining Division of DCS, was subpoenaed at Mr. Vanderwall's request and was present during the hearing, Mr. Vanderwall did not call him as a witness to inquire whether DCS would have found Ms. Sterne's qualifications sufficient to meet the minimum qualifications for the class of Planning Analyst VI.

45. Although Frank Reitzell, the then Chief of the Classification and Pay Division of DCS, was subpoenaed at Mr. Vanderwall's request and was present during the hearing, he was not asked why Ms. Sterne was title changed rather than reallocated, nor was he asked on what basis DCS title changed position

#1155-001 (formerly, Community Planning Program Coordinator), to the class of Planning Analyst IV.

46. No evidence of political interference in connection with Ms. Sterne's title change was presented.

47. After Mr. Vanderwall's letter of appeal/request for investigation was received by DCS, Herbert L. Sumrall, the Director, instructed Lou West to conduct an investigation of Mr. Vanderwall's complaints. Mr. West conducted an investigation and submitted a written report to the Director. By letter dated November 26, 1984, Mr. Vanderwall was advised that the Director had declined to file charges with the Commission, but that Mr. Vanderwall had the right to prosecute his charges before the State Civil Service Commission.

CONCLUSIONS OF LAW

A.

THE INVESTIGATION REPORT

Throughout the hearing, Mr. Vanderwall demanded that DCS produce the investigation report which it prepared as a result of Mr. Vanderwall's complaints. Civil Service Rule 16.1 provides as follows:

> 16.6 Filing of Charges.
>
> (a) Any person may file with the Director or the Commission written charges of a violation by any person of the Article or the Rules.
>
> (b) When the Director, in the exercise of the authority granted by him in Rule 3.1(1) hereof, has caused

investigation to be made of reported violation of the Article or the Rules or has reason to believe that there has been violation of the Article or the Rules he may, in addition to other actions authorized by the Article or these Rules, file written charges with the Commission and present his findings to the Commission at a public hearing in a proceeding directed against the persons under investigation.

In this matter, Mr. Vanderwall filed his charges pursuant to Civil

Service Rule 16.1(a). Pursuant to Civil Service Rule 3.1, the Director ordered an investigation into Mr. Vanderwall's charges.

When the Director conducts an investigation, all data collected in connection therewith is confidential other than that which is admitted into evidence at a public hearing. Civil Service Rule 15.9(b). The purpose of this Rule is to encourage persons who are witnesses to or who have some knowledge of a possible violation of the Civil Service Article or a Civil Service Rule to come forward and candidly discuss the matter with DCS. These records are kept confidential to guard against possible retaliation against the complainant by agency officials or employees who are charged with alleged

violations and also to protect the charged respondents from public disclosure of charges which are found to have been frivolous. If the Director elects to file charges based on the investigation report, the report then becomes part of the charges and loses its confidential status. On the other hand, if the Director elects not to file charges, the report remains confidential. In this case, the Director, in an exercise of the discretion granted him by Civil Service Rule 16.1(b), elected not to file charges. For these reasons, the Commission did not order DCS to make the investigation report available to Mr. Vanderwall.

THE ALLOCATION ISSUE

An employee's right to appeal the allocation of his position is provided by Civil Service Rule 13.10(d), which reads as follows:

> 13.10 Appeals to the Commission.
>
> An appeal may be made to this Commission by
>
> . . .
>
> (d) Any person in the Classified Service who shall have failed to obtain relief from an allocation or reallocation of a position to a class or by the Classification Plan or any change thereof after a written request

> for review thereof by the Director or his representative as provided in Rule 5.3 and who alleges that the Director's decision has been discriminatory.

In all appeals wherein discrimination is the basis, the burden of proof, as to the facts, is on the appellant. La. Const. Art. X, Sec. 8(B).

In the appeal, Mr. Vanderwall asserts that his allocation was discriminatory. To prove that an allocation is discriminatory, an appellant must prove, by a preponderance of evidence, that other persons performing essentially identical duties are allocated differently. In this case, Mr. Vanderwall put on no evidence

that any other person who headed a small planning unit composed of only two people was allocated to the class of Planning Analyst V or to any class other than Planning Analyst IV. Therefore, Mr. Vanderwall has failed to bear his burden of proving that his allocation was discriminatory.

In addition to the right of appeal provided by Civil Service Rule 13.10(d), an employee can appeal his allocation if that allocation is the result of a violation of the Civil Service Article or a Civil Service Rule. Such a right is encompassed by Civil Service Rule 13.10(c) which reads as follows:

13.10 Appeals to the Commission.

An appeal may be made to this Commission by

. . .

(c) Any person in the Classified Service who alleges that he has been deprived of any right, discriminated against, or adversely affected by the violation of any provision of the Article or of any Rule of this Commission.

In the appeal, Mr. Vanderwall contends that his allocation resulted from a violation of Civil Service Rule 14.1(j), in that his allocation was based on a falsified job description. Civil Service Rule 14.1(j) reads as follows:

14.1 Prohibited Activities.

. . .

(j) No person shall make any false statement,

> certificate, mark, rating, form or report with regard to any application, test, certification, personnel transaction, appointment or employment made under any provision of the Article, the Rules, or a regulation of the Department of Civil Service, or in any manner commit or attempt to commit any fraud preventing the impartial execution of the Article, Rules, and regulations.

Mr. Vanderwall has charged Mr. Kimbrell with violating this Rule and DCS with acting on an obviously falsified job

description.

As to this contention, Mr. Vanderwall has proved that his job description was altered. However, Mr. Vanderwall has failed to prove that after his job description was altered, the resulting description was false. To the contrary, the commission has found that Mr. Vanderwall's job description was more accurate after it was altered than before. As of December 31, 1981, Mr. Vanderwall did not supervise the Community Planning Program Coordinator position. That position was vacant, unfunded, and the class to which it had been formerly allocated had been abolished on August 1, 1980. As of December 31, 1981, it was known that William Barlow, who had been assigned as Director of the Division of Records and

Statistics as of December 4, 1981, would no longer be supervising Mr. Vanderwall and that whoever would be appointed as Director of Policy, Planning and Evaluation would. Finally, based on the evidence presented, the Commission has found that Mr. Vanderwall never supervised the planners mentioned in the narrative portion of his job description. For these reasons, the Commission concludes that although Mr. Vanderwall's job description was altered, it was not falsified and therefore, Mr. Kimbrell did not violate Civil Service Rule 14.1(j) by altering the job description. Likewise, because there was no falsification of the job description, Mr. Vanderwall has failed to prove that his allocation resulted from a violation of Civil Service Rule

14.1(j).

Mr. Vanderwall lodged numerous other complaints concerning his allocation, yet no evidence was presented on these complaints that will support a conclusion that the allocation of Mr. Vanderwall's position was discriminatory or that the Civil Service Article or any Civil Service Rule was violated. For example, Mr. Vanderwall disagreed with the placement of his job in the Planning Analyst series, yet he put on no evidence which indicated that his position sould have been allocated to any other series of classes. Mr. Vanderwall disagreed with the requirements that there be a certain level of supervisory responsibility for a position to be allocated to the class of Planning Analyst V. Mr. Vanderwall

put on no evidence to indicate that the supervisory requirements were discriminatory or were developed in violation of the Civil Service Article or any Civil Service Rule. Mr. Vanderwall complained that the allocation of his position was predetermined because it was used as a "benchmark" for the class of Planning Analyst IV. Mr. Vanderwall's job was chosen as a benchmark because it was a good representation of the fourth level of responsibility found in planning jobs throughout the state. Mr. Vanderwall put on no evidence to indicate that had some other job been selected as a benchmark, Mr. Vanderwall's position would have been allocated to the Planning Analyst V level. To the contrary, the evidence proponderates to

the effect that Mr. Vanderwall's job simply did not fall within the fifth level of responsibility and therefore could not have been allocated to the class of Planning Analyst V. The only way Mr. Vanderwall could have been allocated to the class of Planning Analyst V was if OHSEQ chose to use an organizational structure which had an Assistant Director of the Policy, Planning and Evaluation Section and if OHSEQ chose to assign this duty to Mr. Vanderwall. Neither the Civil Service Article nor any Civil Service Rule requires an agency to create a position it does not want or need solely to provide an employee an opportunity for advancement. Therefore, no evidence of a violation of either the Article or a Rule has been proved. Mr. Vanderwall

complained that DCS simply rubber stamped the wishes of DHHR personnel; however, the evidence presented was that DHHR asked for Mr. Vanderwall's job to be reallocated to Planning Analyst V, but DCS title changed that position to Planning Analyst IV and that DHHR asked that Ms. Sterne's job be reallocated to DHHR Executive Officer I, but DCS title changed Ms. Sterne's job to Planning Analyst VI. Thus, Mr. Vanderwall has failed to prove his charge of rubber stamping. Mr. Vanderwall complained that DCS should have allocated the jobs independently of DHHR or OHSEQ. Civil Service Rules 5.1 and 5.2 require DCS to consult the appointing authorities in the allocation process. Rather than proving a violation, Mr. Vanderwall proved that DCS complied with this Rule.

Although Mr. Vanderwall filed a litany of complaints, he failed to prove any violation of the Civil Service Article or of any Civil Service Rule or any discrimination which had any bearing on his allocation. The thrust of Mr. Vanderwall's complaints is that had not DCS, DHHR and OHSEQ acted improperly, his position would have been allocated to a higher class. This was not shown. The evidence presented clearly preponderates to the effect that Mr. Vanderwall's job was appropriately allocated to the class of Planning Analyst IV.

C.

THE TITLE CHANGE ISSUE

Mr. Vanderwall complained that DCS's decision to title change, rather than reallocate, his and Ms. Sterne's

positions was incorrect and was done solely to demote him and to promote Ms. Sterne to a position for which she was not qualified. Mr. Vanderwall also complained that DCS title changed the wrong position and should have title changed position #1155-001 rather than Ms. Sterne's position.

Civil Service Rule 1.40.1 defines title change as "...a change in the title of the class to which a position is allocated without change in the position's duty and responsibility content." Title changes are used when new class specifications are developed to describe existing jobs. Incumbents of positions which are title changed are allowed to remain in their positions whether or not they meet the minimum qualifications for the new class (Civil

Service Rule 5.7).

The Commission concludes that Mr. Vanderwall's position was properly title changed because his duties remained essentially unchanged. Both before and after the title change, Mr. Vanderwall was the most senior planner for OHSEQ and was the head of the Planning Unit within the Policy, Planning and Evaluation Section. Furthermore, the Commission concludes that Mr. Vanderwall was not demoted as a reuslt of this title change. A demotion is defined in Civil Service Rule 1.11 as "a change of a permanent or a probationary employee from a position of one class to a position of another class for which a lower minimum rate is prescribed." Prior to his title change, Mr. Vanderwall's allocation was Health

Planning Officer, which had a minimum pay rate of $1538 per month. After the title change, Mr. Vanderwall's allocation was Planning Analyst IV, which had a minimum pay rate of $1594 per month. Thus, Mr. Vanderwall was not demoted as a result of the title change. See also Frazier v. Department of State Civil Service, 449 So. 2d 95 (La. App. 1st Cir. 1984).

Although the Commission has found that there was nothing improper about Mr. Vanderwall's title change, the same cannot be said about Ms. Sterne's title change. Based on the evidence presented, the Commission concludes that Ms. Sterne's position should not have been title changed. First the position which was title changed was position #1714-003, which was the program

evaluation position into which Ms. Sterne was initially hired and which was allocated as a Federal Program Analyst II. The duties of a journeyman program evaluator are drastically different from the duties of the Director of the Policy, Planning and Evaluation Section. For this reason, position #1714-003 should not have been title changed. Second, Ms. Sterne was not an incumbent of the job of Director of Policy, Planning and Evaluation as of December 31, 1981. She was assigned some of these duties on an acting basis, but had not been officially placed in that position by promotion, appointment, detail, or otherwise as of December 31, 1981. That Ms. Sterne was not an incumbent of this position is blatantly obvious from her December 31, 1981, job

description, particularly Section 14 thereof, which essentially states that the position was vacant and OHSEQ wanted to appoint Ms. Sterne to that vacant position. Because Ms. Sterne was not an incumbent of the position, she was not eligible to be title changed without meeting the minimum qualifications for the new class. Third, the position which DCS title changed (#1714-003) was not the position for the Director of Policy, Planning and Evaluation. The only position which had ever been used as the Director of that Section was position #1155-001. Therefore, the only position which could have been title changed to Planning Analyst VI was position #1155-001. For the foregoing reasons, the Commission concludes that Mr. Vanderwall has proved that DCS

violated the Civil Service Rules concerning Ms. Sterne's title change. The Commission would order that disciplinary action be taken against the person who was responsible for this error; however, Mr. Vanderwall did not put on any evidence to enable the Commission to determine who that person was. There are several sets of initials on the job descriptions. While it would appear that Larry Golden and Thomas Smythe determiend that the job should be allocated as a Planning Analyst VI, there is no indication on the job description as to who made the decision that the transaction should be a title change rather than some other type of transaction. Frank Reitzell, the then Chief of the Classification and Pay Division of DCS, signed the letter

ordering the title change and as Division Chief, might be said to be ultimately responsible for the decisions of that Division. However, even if Mr. Reitzell is presumed to have been ultimately responsible for the decision, Mr. Reitzell has retired from state service and therefore is not subject to any disciplinary action. Mr. Reitzell was subpoenaed to appear at the hearing at Mr. Vanderwall's request and was in fact present during the hearing on April 2, 1985. Certainly, Mr. Reitzell would have been in a position to identify who handled the transaction and whose responsibility it was to determine which position, if any, should have been title changed and whether the position was incumbered; however, Mr. Vanderwall did not even call Mr. Reitzell as a witness.

Because Mr. Vanderwall has failed to show who was responsible for the improper title change, no disciplinary action against anyone at DCS can be ordered.

While Mr. Vanderwall has proved that Ms. Sterne should not have been title changed into the position of Director of Policy, Planning and Evaluation and therefore would have had to have met the minimum qualifications for the class of Planning Analyst VI, Mr. Vanderwall failed to prove that Ms. Sterne did not actually meet those qualifications. Ms. Sterne was a party to the appeal and Mr. Vanderwall could have cross-examined her in detail concerning her qualifications. Mr. Vanderwall did not. Bill Rowe, the Chief of Examining for DCS, was

subpoenaed as a witness at Mr. Vanderwall's request and was present during the hearing. Mr. Vanderwall could have examined Mr. Rowe as to whether Ms. Sterne would have been considered qualified. Yet, Mr. Vanderwall did not even call Mr. Rowe as a witness. The Commission cannot conclude, based on the evidence presented, that Ms. Sterne did not qualify for the position because Mr. Vanderwall did not bear his burden of proof in this regard.

Mr. Vanderwall essentially contended that DCS deliberately title changed Ms. Sterne's position because she was not qualified to be placed in the position in any other manner. As noted above, Mr. Vanderwall failed to prove that Ms. Sterne did not qualify

for the position. additionally, Mr. Vanderwall put on no evidence whatsoever to indicate why the position was title changed. For these reasons, there is insufficient evidence to enable the Commission to conclude that DCS deliberately allowed Ms. Sterne to be placed in a position for which she did not qualify.

Mr. Vanderwall contended that OHSEQ deliberately misled DCS and falsified Ms. Sterne's job description so she would be promoted to a position for which she did not qualify. The evidence indicates that OHSEQ very clearly stated its intentions on the job description itself--that the position was vacant and they wanted to appoint Ms. Sterne to it. OHSEQ also indicated on the job description that they did not know

whether the position would constitute a reallocation or a new position. Finally, OHSEQ did not even ask for a title change to Planning Analyst IV--they asked for an allocation or a reallocation to DHHR Executive Officer I. Had OHSEQ been guilty of the conspiracies alleged by Mr. Vanderwall, it certainly could have done a better job of camouflaging its intentions. OHSEQ wanted to see Ms. Sterne paid higher. For two years, she had been shuffled round, had been performing more responsible work than her allocation suggested and was not being paid for it. Certainly, it is not a violation of any merit principle or any Civil Service Rule to try to insure that an employee is appropriately paid for what she does. OHSEQ very candidly announced its

intentions for Ms. Sterne on her job description but someone at DCS misinterpreted it. For the foregoing reasons, the Commission concludes that Mr. Vanderwall has failed to prove any violation of the Civil Service Article or any Civil Service Rule by OHSEQ. Therefore, no disciplinary action against any employee of OHSEQ is warranted.

D.

RELIEF

Although Mr. Vanderwall has proved that Ms. Sterne's title change was in violation of the Civil Service Rules, this does not entitle Mr. Vanderwall to the relief he seeks--a reallocation of his positoin to a Planning Analyst V position or to some other position which he feels is commensurate with his

duties. Even had the allocation of the position of Director of Policy, Planning and Evaluation been properly handled--either by title changing position #1155-001 or by allocating the position as a vacant new position--there was no evidence presented which indicates that Mr. Vanderwall would have been promoted to the position of Director or that Ms. Sterne could not have been. The Commission has concluded that Mr. Vanderwall's job was properly allocated. The fact that Ms. Sterne's title change was improper does not in any way affect the propriety of Mr. Vanderwall's allocation and does not entitle Mr. Vanderwall to a higher allocation.

For the foregoing reasons, the appeal is denied and no disciplinary

action is ordered as a result of the investigation.

Pursuant to Civil Service Rule 13.27, Mr. Vanderwall is ordered to pay witness fees to the following persons who are no longer employed by the state and who were subpoenaed at Mr. Vanderwall's request: Frank Reitzell - #13.00 as a witness fee and $69.44 for mileage; David Bruce - $13.00 as a witness fee and $28.80 for mileage; and Bickham Pardue - $13.00 as a witness fee and $23.36 for mileage.

s/ James R. Smith
James R. Smith, Chairman

s/ Marshall J. Ryals
Marshall J. Ryals,
Vice-Chairman

s/ Edwin C. Harbuck
Edwin C. Harbuck, Member

s/ James A. Smith
James A. Smith, Member

s/ Dianne C. Troullier
Dianne C. Troullier, Member

Commissioners A.J. Capritto and David D. Duggins were absent and do not participate.

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

WILLIAM VANDERWALL	CIVIL ACTION
VERSUS	NO. 86-525
MS. CONSTANCE HORNER, ET AL	SECTION "E"

ORDER AND REASONS

Plaintiff brings this action against various employees of the state and federal government. The plaintiff alleges that his demotion (and the promotion of others) during his employ at the Louisiana Department of Health and Human Resources was the result of a conspiracy of the defendants, whom he believes deprived him of his constitutional rights under the federal and state constitutions. Two of the defendants have now responded to the